

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL L. JONES,)
)
)
 Plaintiff,)
)
)
 v.) C.A. No. 07-791-GMS
) Jury Trial Demanded
RAYNARD JONES and AUDREY EVANS,)
)
)
 Defendants.)

**DEFENDANTS' MOTION TO STRIKE
PLAINTIFF'S RESPONSE TO DEFENDANTS' ANSWER**

1. Michael L. Jones ("Plaintiff") is an inmate under the supervision of the Delaware Department of Correction ("DOC") at the James T. Vaughn Correctional Center ("JTVCC") in Smyrna, Delaware.

2. On December 6, 2007, Plaintiff filed a Complaint pursuant to 42 U.S.C. §1983, with leave to proceed *in forma pauperis* alleging First, Eighth and Fourteenth Due Process violations against numerous DOC employees. [D.I. 2]. On this same date, Plaintiff also filed a *Motion for Preliminary Injunction* as well as a *Motion to Appoint Counsel*. [D.I. 4, 5]. On or about April 16, 2008, by Order of the Court, all of the Defendants were dismissed except Defendants Raynard Jones and Audrey Evans. [D.I. 8]. Plaintiff's *Motion for Appointment of Counsel* was also denied. *Id.*

3. On August 5, 2008, Defendants filed an *Answer*. [D.I. 14].

4. On September 3, 2008, Plaintiff filed a *Response to Defendants' Answer to Complaint*. [D.I. 20].

5. Plaintiff's *Response to Defendants' Answer to Complaint* should be stricken pursuant to Fed.R.Civ.P. 7. Rule 7 provides in relevant part:

(a) **Pleadings.** Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) *if the court orders one, a reply to an answer.* (emphasis added).

6. There is nothing in the Court's docket reflecting that the Court ordered the Plaintiff to file a response to Defendants' Answer. The Plaintiff's latest motion should be stricken as it clearly violates Fed.R.Civ.P. 7. While Defendants do not dispute the Plaintiff's right to seek redress for perceived violations of his rights, he must do so pursuant to the Court's rules so that the parties and the Court will be aware of the specific factual and legal issues to be decided in a pending case.

WHEREFORE, Defendants respectfully request that this Honorable Court strike Plaintiff's motion filed on September 3, 2008, as the Plaintiff's motion is outside the scope of pleadings permitted by Fed.R.Civ.P. 7.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Catherine Damavandi
Catherine Damavandi (ID # 3823)
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(302) 577-8400

Dated: September 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2008 I electronically filed *Defendants' Motion to Strike* with the Clerk of Court using CM/ECF. I further certify that on September 5, 2008, I caused the within document to be mailed to the following non-registered participant by United States Postal Service:

Michael L. Jones
SBI#417267
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Catherine Damavandi
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Attorney for Defendants

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ORDER

Upon the Plaintiff's *Response to Defendants' Answer to Complaint* [D.I. 20], and Defendants' *Motion to Strike*; and it appearing that good and sufficient notice of Plaintiff's *Motion* and Defendants' *Response* has been given; and after due deliberation thereon:

IT IS HEREBY ORDERED that Plaintiff's *Response to Defendants' Answer to Complaint* is **STRICKEN**.

SO ORDERED this _____ day of _____, 2008.

The Honorable Gregory M. Sleet
United States District Court Judge